

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO.: 1:18-CR-280
	)	
Plaintiff,	)	CHIEF JUDGE PATRICIA A. GAUGHAN
	)	
v.	)	
	)	<u>MOTION TO DISMISS INFORMATION</u>
LAMONT COLVIN, AKA MOOK,	)	<u>REGARDING PRIOR CONVICTION</u>
	)	
Defendant.	)	

Now comes the United States of America, by and through counsel, Justin E. Herdman, United States Attorney, and Margaret A. Sweeney, Assistant United States Attorney, moving to dismiss the Information Regarding Prior Conviction (R. 31: Information, Page ID 197-99).

On June 5, 2018, a grand jury indicted Colvin for various offenses, including Count 1 (Possession with Intent to Distribute 24.9 grams of methamphetamine). (R. 1: Indictment, Page ID 1-4).

On November 13, 2018, the United States filed an Information Regarding Prior Conviction for purposes of invoking the increased sentencing provisions in 21 U.S.C. § 841(b). (R. 31: Information, Page ID 197-99). The previous conviction upon which the United States relied for the sentencing enhancement was Trafficking Offenses, in the Court of Common Pleas of Cuyahoga County, Case No. CR-10-533730-A. (Id., PageID 197).

On December 6, 2018, Colvin plead guilty to the indictment. Prior to sentencing, defense counsel obtained the sentencing transcript from Case No. CR-10-533730-A and learned that the judgment entry incorrectly listed the conviction as a first-degree felony. Based on the transcript, the conviction was a second-degree felony.

On December 21, 2018, the First Step Act of 2018 was enacted, changing the kinds of offenses that the United States can use to invoke the enhanced sentencing provisions of 21 U.S.C. § 841(b)(1). Under the new law, a defendant must have a “prior conviction for a serious drug felony.” First Step Act of 2018, Sec. 401(a)(2)(B). “Serious drug felony” means any state offense that involves the distribution or possession with the intent to distribute a controlled substance and is punishable by 10 years or more in prison. 21 U.S.C. § 802(57); 18 U.S.C. § 924(e)(2). This change in the law applies “to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment.” First Step Act of 2018, Sec. 401(c).

In this case, Colvin’s prior second-degree felony was not punishable by more than 10 years in prison. Therefore, because his prior conviction no longer qualifies for sentencing enhancement purposes, the United States moves to dismiss the Information Regarding Prior Conviction. If the Court grants this motion, then the statutory penalties for Count 1 will be: a mandatory prison sentence of 5-40 years, a fine of \$5,000,000, and a mandatory period of supervised release of at least 4 years.

Respectfully submitted,

JUSTIN E. HERDMAN  
United States Attorney

By: /s/ Margaret A. Sweeney  
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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of April, 2019 a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ Margaret A. Sweeney

Margaret A. Sweeney  
Assistant U.S. Attorney